IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.M-182 of 2006 (O&M)
Date of Decision: 10.12.2015

Parmodh Kumar .....Appellant

Versus

Smt. Sunita

....Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S.Bajaj, Advocate
for the appellant.

Dr. Amanpreet Sandhu, Advocate
for the respondent.

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RAJIVE BHALLA, J (ORAL)

The appellant challenges judgment and decree dated 20.05.2006, passed by the Additional District Judge-cum-Presiding Officer, Fast Track Court, Rupnagar, dismissing his petition for grant of a decree of divorce.

The parties were married on 08.07.1989. A male child was born to them on 04.08.1990. The appellant filed a petition for grant of a decree of divorce levelling allegations of desertion and cruelty. The respondent denied these allegations. The Additional District Judge-cum-Presiding Officer, Fast Track Court, Rupnagar, after examining the pleadings and the evidence, dismissed the petition. The appellant has filed this appeal.

During pendency of the appeal, parties were referred to the Mediation and Conciliation Centre of the High

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Court, where they arrived at a written settlement/agreement dated 17.07.2015, agreeing to dissolve their marriage by filing a petition under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act"), settling the amount of permanent alimony as Rs.25 lacs, agreeing to stop the payment of maintenance, withdraw/compromise a case pending under Section 498-A of the IPC at Kharar, etc. The appeal thereafter came up for consideration and the following order was passed on 24.09.2015:-

> *"The appellant has handed over a demand draft of Rs.2,00,000/- to the respondent in accordance with the terms & conditions of the settlement dated 17.07.2015.*
>
> *To enable the parties to comply with terms & conditions of the settlement, adjourned to 10.12.2015.*
>
> *No further amount relating to maintenance shall be deducted from the salary of the appellant from October, 2015 onwards.*
>
> *The appellant undertakes to clear electricity bills upto October, 2015 within fifteen days."*

Thereafter as there was some dispute with respect to performance of the terms of settlement, the appeal has come up for hearing today.

Counsel for the appellant submits that a perusal of the pleadings and the evidence reveals that the appellant has led sufficient evidence to prove the allegations of desertion and cruelty. The trial Court misread relevant evidence and

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discarded evidence that proves the allegations by recording conclusions that are not only perverse but also arbitrary. Counsel for the appellant further submits that the evidence on record reveals that the respondent is residing in the house owned by the appellant but does not let the appellant enter the house, compelling the appellant to reside separately, thereby proving cruelty. The appellant is, however, still ready and willing to abide by the settlement dated 17.07.2015 and has already paid Rs.2,00,000/- as permanent alimony, but the respondent is not ready to abide by the settlement.

Counsel for the respondent submits that she has instructions from the respondent, who is present in Court, to state that she shall admit the allegation of desertion, provided the appellant agrees to pay permanent alimony, recorded in the settlement/agreement dated 17.07.2015 and withdraw his allegation of cruelty. Counsel for the respondent also submits that the respondent has never refused to abide by the settlement but it is the appellant who did not agree to pay the remaining amount.

Counsel for the appellant states on instructions from the appellant, who is present in Court, that the appellant gives up the allegations and averments of cruelty but maintains his plea of desertion and would be bound by the amount of permanent alimony recorded in settlement/agreement dated 17.07.2015. Counsel for the

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appellant further prays that the respondent should be directed to hand over the actual physical possession of the house at Kharar to the appellant and only then will the appellant pay the amount of permanent alimony.

Counsel for the respondent, in response, states that the respondent shall hand over the keys of the house in Court today, provided the appellant pays the remaining amount of permanent alimony in Court.

We have heard counsel for the parties, perused the impugned judgment, the pleadings and the evidence as well as settlement dated 17.07.2015 recorded before the Mediation and Conciliation Centre.

The appellant has given up his plea of cruelty whereas the respondent has admitted the allegation of desertion. To rule out any possibility of collusion, fraud and coercion, we explained the consequences of the admissions to the parties but the parties remained steadfast in their stand that the appellant gives up the plea of cruelty and the respondent admits the plea of desertion.

Taking into consideration the aforesaid facts, particularly the pleadings and the evidence on record read with the admission made by the respondent we are of the firm opinion that the appellant has succeeded in proving the allegation of desertion and is, therefore, entitled to a decree of divorce. The appellant, as agreed, shall pay Rs.23 lacs to the

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respondent, as permanent alimony within two days from today provided the respondent hands over the keys of the house in her possession. The respondent has handed over the keys of the house in Kharar to the appellant in Court today, thereby relinquishing any right, title or interest including possession of house No.3863 (left side portion), ward No.15, Kharar, District Ropar, as well as any right relating to maintenance, past, present or future or permanent alimony.

Consequently, we allow the appeal, set aside the impugned judgment and decree and dissolve the marriage between the parties by grant of a decree of divorce on the ground of desertion, alone. The appellant has handed over two cheques of Rs.10,000/- and Rs.5,000/- towards electricity charges. The respondent, as agreed, will cooperate in getting the FIR quashed.

Decree sheet be drawn up accordingly.

[RAJIVE BHALLA]
JUDGE

10.12.2015
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[REKHA MITTAL]
JUDGE

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